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Attorneys for Plaintiff, OLGA ORTMANN, and the Proposed Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

OLGA ORTMANN, as an individual  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE  
COMPANY, a corporation; NEW  
YORK LIFE INSURANCE AND  
ANNUITY CORPORATION, a  
corporation; and DOES 1  
THROUGH 20, inclusive,

Defendants.

**Case No. CV-02506-WHA**

**CLASS ACTION**

**Hon. William A. Alsup**

**Action Removed: May 10, 2007**

**STIPULATION AND [PROPOSED]  
ORDER FOR DISMISSAL**

**STIPULATION**

WHEREAS, on March 26, 2007 this action commenced when Plaintiff Olga Ortmann ("Plaintiff") instituted a civil action in the Superior Court of the State of California for the County of Alameda against Defendants New York Life Insurance Company and New York Insurance and Annuity Corporation (collectively "Defendants");

WHEREAS, on May 10, 2007, Defendants filed a Notice of Removal of Action to the United States District Court for the Northern District of California;

WHEREAS, on May 24, 2007, Defendants filed a Motion to Stay, Transfer or in the Alternative, Dismiss Pursuant to the First-To-File Rule. The Motion was brought on the grounds that a first-filed action was pending in the United States District Court for the Central District of California;

WHEREAS, that action, *Opyrchal v. New York Life Insurance Company, Inc., New York Life and Health Insurance Company, Inc., and New York Life Insurance and Annuity Corporation*, Case No. CV-07-518-VBF (VBKx) (the "Opyrchal Action") includes claims identical to those asserted by Plaintiff in the present action;

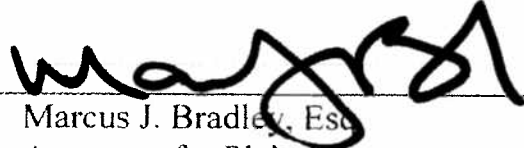
WHEREAS, the Parties agree that the matter of *Ortmann v. New York Life Insurance Company, Inc., and New York Life Insurance and Annuity Corporation*, should be dismissed without prejudice and that Plaintiff will be added as a named plaintiff in the Opyrchal Action. The filing of the Amended Complaint, attached hereto, in the United States District Court for the Central District of California has been stipulated to by the parties so as to include the claims of Olga Ortmann in the Opyrchal Action.

NOW, THEREFORE, the Parties hereby stipulate and agree to the following and ask that the Court approve this stipulation as an Order of the Court:

1 I. That the Court order the matter of *Ortmann v. New York Life*  
2 *Insurance Company, Inc., and New York Life Insurance and Annuity Corporation,*  
3 Case No. CV-02506-WHA, dismissed without prejudice.


4  
5 Dated: June 28, 2007

MARLIN & SALTZMAN  
SCHWARTZ, DANIELS & BRADLEY  
LAW OFFICES OF PETER M. HART

6  
7  
8 By   
9 Marcus J. Bradley, Esq.  
Attorneys for Plaintiff

10  
11 Dated: June 28, 2007

MORGAN, LEWIS & BOCKIUS, LLP

12  
13  
14 By   
15 Jill Porcaro, Esq.  
16 Attorneys for Defendants  
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1           GOOD CAUSE APPEARING, IT IS SO ORDERED that the case *Ortmann*  
2 *v. New York Life Insurance Company, inc., and New York Life Insurance and*  
3 *Annuity Corporation*, Case No. CV-02406-WHA is dismissed without prejudice.

4  
5 Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

A. Mark Pope, Esq. (Cal. State Bar No. 77798)  
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\* Additional Plaintiffs' Counsel on Following Page

Attorneys for Named Plaintiffs OLGA ORTMANN and JUSTIN OPYRCHAL,  
individually, and on behalf of all other similarly situated current and former  
employees of Defendants in the State of California

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

OLGA ORTMANN and JUSTIN  
OPYRCHAL, individually, and on  
behalf of all other similarly situated  
current and former employees of  
Defendants in the State of California,

Plaintiffs,

v.

NEW YORK LIFE INSURANCE  
COMPANY, INC., a New York  
corporation; NEW YORK LIFE  
INSURANCE AND ANNUITY  
CORPORATION, INC., a Delaware  
corporation; and DOES 1 through 100  
inclusive,

Defendants.

) Case No. CV 07-518-VBF (VBKx)  
) CLASS ACTION

) Hon. Valerie Baker Fairbank

) Action Removed: January 23, 2007

) **PLAINTIFFS' SECOND**  
) **AMENDED CLASS ACTION**  
) **COMPLAINT**

) *Demand for Jury Trial*

Additional Plaintiffs' Counsel

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1 Named Plaintiffs OLGA ORTMANN and JUSTIN OPYRCHAL, individually,  
2 and on behalf of all other similarly situated current and former employees of  
3 Defendants in the State of California (hereinafter, collectively referred to as  
4 “Plaintiffs”), allege as follows:

5 **I. JURISDICTIONAL AND VENUE ALLEGATIONS**

6 1. Plaintiffs are informed and believe, and thereon allege that Defendant  
7 NEW YORK LIFE INSURANCE COMPANY, INC., is, and at all times relevant  
8 hereto was, a corporation organized and existing under and by virtue of the laws of  
9 the State of New York, with its headquarters and/or principal place of business in  
10 New York, New York. Plaintiffs are further informed and believe, and thereon  
11 allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., is, and  
12 at all times relevant hereto was, a foreign corporation qualified to transact and  
13 conduct business in the State of California, and that at all times relevant hereto  
14 did, and still does, transact and conduct business throughout the State of  
15 California, including but not limited to the Counties of Alameda and Los Angeles,  
16 where Named Plaintiffs ORTMANN and OPYRCHAL respectively performed  
17 work for Defendants. Plaintiffs are further informed and believe, and thereon  
18 allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., does,  
19 and at all times relevant hereto has, sold insurance policies to consumers  
20 throughout the State of California and operated offices within the State of  
21 California where Plaintiffs have worked. Defendant NEW YORK LIFE  
22 INSURANCE COMPANY, INC., is thus alleged to be one of Plaintiffs’  
23 “employers” as it relates to the claims in this lawsuit.

24 2. Plaintiffs are informed and believe, and thereon allege that Defendant  
25 NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., is,  
26 and at all times relevant hereto was, a corporation organized and existing under  
27 and by virtue of the laws of the State of Delaware, with its headquarters and/or  
28 principle place of business in Dallas, Texas. Plaintiffs are further informed and

1 believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE  
2 AND ANNUITY CORPORATION, INC., is, and at all times relevant hereto was,  
3 a foreign corporation qualified to transact and conduct business in the State of  
4 California, and that at all times relevant hereto did, and still does, transact and  
5 conduct business throughout the State of California, including but not limited to  
6 the County of San Diego. Plaintiffs are further informed and believe, and thereon  
7 allege that Defendant NEW YORK LIFE INSURANCE AND ANNUITY  
8 CORPORATION, INC., does, and at all times relevant hereto has, sold insurance  
9 policies to consumers throughout the State of California and operated offices  
10 within the State of California where Plaintiffs have worked. Defendant NEW  
11 YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., is thus  
12 alleged to be one of Plaintiffs' "employers" as it relates to the claims in this  
13 lawsuit.

14 3. Therefore, Plaintiffs are informed and believe, and thereon allege that  
15 Defendants NEW YORK LIFE INSURANCE COMPANY, INC., and NEW  
16 YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., and DOES  
17 1-100 (hereinafter, collectively referred to as "Defendants") are each subject to the  
18 jurisdiction of the State of California, and specifically may be sued on the causes  
19 of action herein in the County of Los Angeles. Plaintiffs are further informed and  
20 believe, and thereon allege that this Court is the proper Court, and this action is  
21 properly filed in the County of Los Angeles, because: for part or all of the "Class  
22 Period" that Plaintiffs will seek certification of in this case, some or all of  
23 Defendants' and/or DOES 1 through 100's obligations and liabilities to Plaintiffs  
24 arose in the State of California, and within the County of Los Angeles; for part or  
25 all of the Class Period that Plaintiffs will seek certification of in this case,  
26 Defendants and/or DOES 1 through 100 maintained offices and transacted  
27 business in the State of California, and within the County of Los Angeles; and for  
28 part or all of the Class Period that Plaintiffs will seek certification of in this case,



1 work was performed by Plaintiffs and made the subject of this action in the State  
2 of California, and within the County of Los Angeles.

3 **II. FACTUAL ALLEGATIONS**

4 4. Plaintiffs hereby reallege, and incorporate by reference in this Section  
5 as though set forth fully herein, the allegations contained in Paragraphs 1 through  
6 3, above.

7 5. Plaintiffs bring this employment Class Action against Defendants to  
8 recover for their wage claims, including: unpaid wages and wage benefits;  
9 violations of minimum wage, unreimbursed business expenses; statutory penalties;  
10 waiting time penalties; restitution related to Defendants' unlawful and unfair  
11 business practices arising from the Plaintiffs' wage and business expense claims;  
12 interest, attorneys' fees, costs and expenses; and nominal and compensatory  
13 damages. Plaintiffs reserve the right to name additional potential Class  
14 Representatives.

15 6. Plaintiffs are informed and believe, and thereon allege that  
16 Defendants' primary business activity in the State of California is as an insurance  
17 company selling insurance policies and financial products to consumers using  
18 Plaintiffs, employed as agents, through offices in the State of California.  
19 Principally, Defendants market and sell insurance policies to their customers and  
20 through agents. Therefore, for Plaintiffs' wage and expense reimbursement claims  
21 as alleged herein, Defendants are obligated to comply with certain portions of the  
22 California Industrial Welfare Commission Wage Order No. 4-2001, originally and  
23 as amended. Further, for Plaintiffs' wage claims and expense reimbursement  
24 claims as alleged herein, Defendants are obligated to comply with applicable  
25 provisions of the California Labor Code.

26 7. Plaintiffs are informed and believe, and thereon allege that Named  
27 Plaintiffs OLGA ORTMANN and JUSTIN OPYRCHAL were employed by  
28 Defendants in the State of California within the four (4) years before the filing of

1 this Complaint as an “Agent” for Defendants. Plaintiffs generally are current and  
2 former employees of Defendants throughout the State of California, who have  
3 been employed by Defendants in the State of California within the four (4) years  
4 before the filing of this Complaint – and continuing to trial or until an appropriate  
5 ending date for a Class Period – as Agents for Defendants (and/or in similar  
6 positions and/or with similar job titles, duties, and responsibilities) working under  
7 a “TSA Plan Agreement” which defines them as employees of Defendants.

8       8. Plaintiffs are informed and believe, and thereon allege that as Agents  
9 for Defendants (and/or in similar positions and/or with similar job titles, duties,  
10 and responsibilities), Plaintiffs do work and have worked for Defendants  
11 throughout the State of California within the four (4) years before the filing of this  
12 Complaint, to conduct and transact Defendants’ insurance and financial products  
13 business. Specifically, Agents act as salespersons to Defendants’ customers and  
14 potential customers. Agents are based out of one of Defendants’ offices in cities  
15 throughout California. The job requirements of all Agents are the same or  
16 substantially similar, and they are principally to sell Defendant’s insurance  
17 policies or other financial products. Named Plaintiffs OLGA ORTMANN and  
18 JUSTIN OPYRCHAL were employed by Defendants in the State of California  
19 within the four (4) years before the filing of this Complaint as an Agent for  
20 Defendants.

21       9. Plaintiffs are informed and believe, and thereon allege that all Agents  
22 are typically required to attend a mandatory three-month training class at the  
23 beginning of their employment, in which they attend class for eight hours per day,  
24 three days per week. After the initial three month training period, Plaintiffs are  
25 required to attend training for eight hours per day, two days per week. While the  
26 Agents are engaged in and attending such orientation training classes, Agents are  
27 not engaged in any activities directly related to marketing or selling policies or  
28 products to Defendants’ customers; such training classes are, however, intended to

1 educate and train Agents how to act as salespeople to sell the products and policies  
2 marketed by Defendants. Plaintiffs end up without any payment for the time spent  
3 in training classes, and/or with payment less than the legal minimum wage.

4 10. Plaintiffs are informed and believe, and thereon allege that during the  
5 first three years of performing work for Defendants, Agents are employed  
6 pursuant to a written contract, the TSA Plan Agreement, which declares that  
7 Plaintiffs are employees of Defendants, and that they must devote their "entire  
8 time to the business of this employment."

9 11. Plaintiffs are informed and believe, and thereon allege that during  
10 their course of the first three years of their employment with Defendants, Agents  
11 are unlawfully not paid all earned wages as required by California law, are not  
12 provided itemized paychecks as required by California law, are not guaranteed  
13 payment of minimum wage as required by California law, and are not reimbursed  
14 for business expenses as required by California law and/or are improperly charged  
15 for business expenses in contravention of California law. Therefore, Plaintiffs  
16 have been, for a period of time within the four (4) years before the filing of this  
17 Complaint, improperly deprived of wages and benefits of employment as  
18 described herein.

19 12. Plaintiffs are informed and believe, and thereon allege, that at all  
20 relevant times herein, DOES 1 - 50, are individuals who are/were citizens and  
21 residents of the State of California. Plaintiffs are further informed and believe,  
22 and thereon allege, that at all relevant times herein DOES 1 - 50 owned,  
23 controlled, and/or managed the corporate affairs of Defendants and other of the  
24 DOE Defendant business entities, and/or directly or indirectly exercised  
25 operational control over the wages, hours, and working conditions of Plaintiffs,  
26 and/or engaged in fraudulent and/or tortious activity to the detriment of Plaintiffs.  
27 As such, DOES 1 - 50 are "employers" as a matter of law for purposes of imposing  
28 personal liability for the Labor Code violations alleged herein, pursuant to

1 California wage and hour laws.

2 13. Plaintiffs are informed and believe, and thereon allege that  
3 Defendants DOES 1 - 100 are, and at all times relevant hereto were, persons,  
4 corporations or other business entities, and are/were qualified to transact and  
5 conduct business in the State of California, and did and do transact and conduct  
6 business in the State of California, and are thus subject to the jurisdiction of the  
7 State of California. Specifically, DOES 1 - 100 maintain offices, operate  
8 businesses, employ persons, conduct business in, and illegally pay employees by  
9 illegal payroll practices and policies described herein, throughout the State of  
10 California.

11 14. Plaintiffs are informed and believe, and thereon allege that at all  
12 relevant times herein DOES 1 - 100 are/were the officers, owners, executives,  
13 directors, partners, or shareholders of Defendants and of one another, who were  
14 acting on behalf of Defendants and each other in the establishment of, ratification  
15 of, and/or execution of the illegal payroll practices and policies described herein.  
16 Plaintiffs are further informed and believe, and thereon allege that at all times  
17 relevant hereto DOES 1 - 100 have held ownership, officer, director and/or  
18 executive positions with Defendants and with one another, which included  
19 decision-making responsibility for, and establishment and execution of, illegal  
20 payroll practices and policies for Defendants and each other, and Defendants and  
21 DOES 1 - 100 are, therefore, liable on the causes of action alleged herein pursuant  
22 to California wage and hour laws. Plaintiffs are further informed and believe and  
23 thereon allege that Defendants and DOES 1 - 100 are Plaintiffs' joint employers  
24 by virtue of a joint enterprise; Plaintiffs perform, and have performed, services for  
25 each and every of Defendants, and to the mutual benefit of all Defendants, and all  
26 Defendants share control of Plaintiffs as employees, either directly or indirectly,  
27 and the manner in which Defendants' business is conducted.

28 15. Plaintiffs are informed and believe and thereon allege that there exists

1 such a unity of interest and ownership between and among all Defendants that the  
2 individuality and separateness of those Defendants have ceased to exist. The  
3 business affairs of Defendants are, and at all times relevant hereto were, so mixed  
4 and intermingled that the same cannot reasonably be segregated, and the same are  
5 in inextricable confusion. Defendants are, and at all times relevant hereto were,  
6 used by DOES 1 - 100 as a mere shell and conduit for the conduct of certain of  
7 Defendants' affairs. The recognition of the separate existence of Defendants  
8 would not promote justice, in that it would permit Defendants to insulate  
9 themselves from liability to Plaintiffs. Accordingly, Defendants and DOES 1 -  
10 100 constitute the alter egos of each other, and the fiction of their separate  
11 existence must be disregarded at law and in equity, because such disregard is  
12 necessary to avoid fraud and injustice to Plaintiffs herein.

13 16. Plaintiffs are informed and believe and thereon allege (unless  
14 otherwise alleged in this Complaint), that at all relevant times herein, Defendants  
15 and DOES 1 - 100 were the agents, employees and/or servants, masters or  
16 employers of each other and of the remaining DOES 1 - 100, and in doing the  
17 things herein alleged, were acting within the course and scope of such agency or  
18 employment, and with the approval and ratification of each of the other  
19 Defendants.

20 17. Plaintiffs are informed and believe and thereon allege that each and  
21 every one of the acts and omissions alleged herein were performed by, and/or  
22 attributable to, all Defendants, each acting as agents and/or employees, and/or  
23 under the direction and control of each of the other Defendants, and that said acts  
24 and failures to act were within the course and scope of said agency, employment  
25 and/or direction and control, and were committed willfully, maliciously,  
26 oppressively, and fraudulently.

27 18. The true names and capacities, whether individual, corporate,  
28 associate, or otherwise, of DOES 1 - 100, inclusive, are unknown to Plaintiffs,



1 who therefore sue the DOE Defendants by fictitious names. Plaintiffs will amend  
2 this Complaint to show their true names and capacities when they have been  
3 ascertained.

4 19. At all relevant times alleged herein Plaintiffs were employed by  
5 Defendants under a written employment agreement, the TSA Plan Agreement. In  
6 perpetrating the acts and omissions alleged herein, Defendants, and each of them,  
7 acted pursuant to and in furtherance of a policy and practice of not paying  
8 Plaintiffs wages owed for certain work performed, of not reimbursing Plaintiffs'  
9 business expenses and/or improperly charging Plaintiffs for business expenses, of  
10 not providing Plaintiffs with properly itemized wage statements, and of failing to  
11 pay Plaintiffs all wages owed at the time of termination, all in violation of certain  
12 provisions of the California Industrial Welfare Commission Wage Order No.4-  
13 2001, originally and as amended, and certain provisions of the California Labor  
14 Code, as described herein, and in violation of the California Business and  
15 Professions Code, sections 17200, *et. seq.*

16 20. As a direct and proximate result of the unlawful actions of  
17 Defendants, Plaintiffs have suffered and continue to suffer from loss of wages,  
18 expenses, and earnings in amounts as yet unascertained, but subject to proof at  
19 trial.

### 20 **III. CLASS ACTION ALLEGATIONS**

21 21. Plaintiffs hereby reallege, and incorporate by reference in this Section  
22 as though set forth fully herein, the allegations contained in Paragraphs 1 through  
23 20, above.

24 22. This action is appropriately suited for a Class Action because:

25 a. The potential class is a significant number because  
26 Plaintiffs are informed and believe, and thereon allege, that  
27 within the past four (4) years Defendants employed, at any one  
28 time, hundreds of Agents throughout the State of California,

1 believed to be well in excess of five hundred (500) employees.  
2 There also are numerous former employees who were subjected  
3 to the same or similar illegal payroll practices and policies.  
4 Joinder of all current and former employees individually would  
5 be impractical;

6 b. This action involves common questions of law and fact  
7 to the potential class because the action focuses on the  
8 Defendants' systematic course of illegal payroll practices and  
9 policies throughout the State of California, which was applied  
10 to all Agents and others similarly situated in violation of the  
11 California Industrial Welfare Commission Wage Order No. 4-  
12 2001, originally and as amended, the California Labor Code,  
13 and the California Business and Professions Code (which  
14 prohibits unfair and unlawful business practices arising from  
15 such violations).

16 c. The claims of the Named Plaintiffs (and as yet other  
17 unnamed Class Representatives) are typical of the class  
18 because Defendants subjected all of their Agents to similar  
19 and/or identical violations of the California Industrial Welfare  
20 Commission Wage Order No. 4-2001, originally and as  
21 amended, the California Labor Code, and the California  
22 Business and Professions Code (which prohibits unfair and  
23 unlawful business practices arising from such violations), and  
24 because all members of the class were employed pursuant to  
25 the same (or similar) TSA Plan Agreement.

26 d. The Named Plaintiffs (and as yet other unnamed Class  
27 Representatives) is able to fairly and adequately protect the  
28 interests of all members of the class because it is in their best

1 interests to prosecute the claims alleged herein to obtain full  
2 compensation due to them for all services rendered and hours  
3 worked.

4 23. This suit seeks only recovery for economic injury on behalf of all  
5 Class Members and it expressly is not intended to request any recovery for  
6 personal injury and claims related thereto. Plaintiffs reserve the right to expand  
7 the Class definitions, and add Subclass definitions as necessary, to seek recovery  
8 on behalf of additional persons as warranted as facts are learned in further  
9 investigation and discovery.

10 24. The joinder of the Class Members is impractical and the disposition  
11 of their claims in the class action will provide substantial benefits both to the  
12 parties and to the court. The Class Members can be easily identified through  
13 Defendants' records.

14 25. Named Plaintiffs ORTMANN and OPYRCHAL will fairly and  
15 adequately represent and protect the interests of the Class in that he has no  
16 interests antagonistic to the Class. Plaintiffs have retained counsel competent and  
17 experienced in the prosecution of class action litigation.

18 26. Plaintiffs and the members of the Class have all suffered irreparable  
19 harm as a result of the defendants' unlawful and wrongful conduct. Absent a class  
20 action, the Class and Subclass members will continue to suffer losses and the  
21 potential for irreparable harm. In addition, these violations of law will be allowed  
22 to proceed without remedy and the Defendants will likely retain the substantial  
23 sums received as a result of their wrongdoing. Because of the size of the  
24 individual Class Members' claims, few, if any, Class Members could afford to seek  
25 legal redress for the wrongs complained of herein.

#### 26 **IV. PLAINTIFFS' CAUSES OF ACTION**

27 27. Plaintiffs hereby reallege, and incorporate by reference in this Section  
28 as though set forth fully herein, the allegations contained in Paragraphs 1 through



1 26, above.

2 **FIRST CAUSE OF ACTION (COUNT ONE):**

3 **FAILURE TO PAY MINIMUM WAGE,**

4 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

5 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

6 **(By All Plaintiffs, Against All Defendants)**

7 28. Plaintiffs hereby reallege, and incorporate by reference in this Cause  
8 of Action as though set forth fully herein, the allegations contained in Paragraphs  
9 1 through 27, above. This cause of action is plead by all Plaintiffs, against all  
10 Defendants.

11 29. Within the three (3) years before the filing of this Complaint,  
12 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or  
13 with similar job titles, duties, and responsibilities) throughout the State of  
14 California, to conduct and transact Defendants' insurance and financial products  
15 business. Defendants have unlawfully denied Plaintiffs wages and other benefits  
16 of employment, when as a matter of fact and law, Plaintiffs are Defendants'  
17 "employees" pursuant to contract. As a result, Plaintiffs are, and have been,  
18 entitled to the protections of the California Industrial Welfare Commission Wage  
19 Order No. 4-2001, originally and as amended, and the California Labor Code, with  
20 regard to the payment of minimum wages for hours worked during each Plaintiffs'  
21 mandatory training period at the beginning of their employment, for that period of  
22 time that they were required to be in class three (3) days per week. Classes during  
23 these training periods are intended to educate and train Agents on how to act as  
24 salespeople to sell the insurance policies and financial products marketed by  
25 Defendants; however, during such training classes, Agents are not engaged in any  
26 sales activities directly related to marketing or selling products and service to  
27 Defendants' customers. Plaintiffs end up without any payment for the time spent  
28 in training classes, and/or with payment less than the legal minimum wage.

1           30.    The benefits and protections of the California Industrial Welfare  
2 Commission Wage Order No. 4-2001, originally and as amended, and the  
3 California Labor Code, with regard to the payment of minimum wages for hours  
4 worked during each Plaintiffs' mandatory training period at the beginning of their  
5 employment (for the period that they are required to be in class three (3) days per  
6 week), provide that for the three (3) years preceding the filing of this action,  
7 Plaintiffs should have been paid minimum wages for all such hours worked,  
8 because as employees during such mandatory training periods they were not and  
9 are not subject to the exclusion of Labor Code section 1171 as outside  
10 salespersons.

11           31.    In addition, Defendants have not paid Plaintiffs the minimum wage  
12 for all hours worked during the period that they were in training for three (3) days  
13 per week. In violation of state law, Defendants have refused to perform their  
14 obligations to properly compensate Plaintiffs at the minimum wage for such hours  
15 worked. As a direct and proximate result, Plaintiffs have suffered, and continue to  
16 suffer, substantial losses related to the use and enjoyment of such monies, lost  
17 interest on such wages, and expenses and attorneys' fees in seeking to compel  
18 Defendants to fully perform their obligation under state law, all to their respective  
19 damage in amounts according to proof at time of trial. As Defendants' conduct  
20 described herein violates the provisions of the California Industrial Welfare  
21 Commission Wage Order No. 4-2001, originally and as amended, and the  
22 California Labor Code regarding the payment of minimum wages to employees,  
23 Plaintiffs are thus entitled to recover all amounts for all such hours worked,  
24 penalties pursuant to Labor Code section 203, liquidated damages, interest,  
25 attorneys' fees, and court costs and expenses of suit, pursuant to Labor Code  
26 sections 1194 and 1194.2, according to proof at time of trial. Plaintiffs are also  
27 entitled to recover, in addition to or in lieu of some or all such wages and benefits,  
28 nominal, actual and compensatory damages in amounts according to proof at time

1 of trial.

2 32. WHEREFORE, Plaintiffs request relief as herein provided.

3 **SECOND CAUSE OF ACTION (COUNT TWO):**

4 **FAILURE TO INDEMNIFY AND REIMBURSE**

5 **FOR BUSINESS EXPENSES,**

6 **AND UNLAWFUL DEDUCTIONS FROM WAGES,**

7 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

8 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

9 **(By All Plaintiffs, Against All Defendants)**

10 33. Plaintiffs hereby reallege, and incorporate by reference in this Cause  
11 of Action as though set forth fully herein, the allegations contained in Paragraphs  
12 1 through 32, above. This cause of action is plead by all Plaintiffs, against all  
13 Defendants.

14 34. Within the three (3) years before the filing of this Complaint,  
15 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or  
16 with similar job titles, duties, and responsibilities), pursuant to the TSA Plan  
17 Agreement, throughout the State of California, to conduct and transact  
18 Defendants' insurance and financial products business. Defendants have  
19 unlawfully denied Plaintiffs wages and other benefits of employment, when as a  
20 matter of fact and law, Agents are Defendants' employees pursuant to contract. As  
21 a result, Plaintiffs are and have been entitled to the protections of the California  
22 Labor Code, including but not limited to sections 2802, et al., with regard to  
23 indemnification for expenditures and losses in discharge of their duties for  
24 Defendants. Furthermore, Defendants were not permitted to make deductions or  
25 set-offs from Plaintiffs' earned wages for items including but not limited to  
26 expenses incurred in the performance of their duties, accidents, and/or damages  
27 caused while discharging their duties. Pursuant to California Labor Code section  
28 2804, Defendants cannot ask or require Plaintiffs to waive the benefits of

1 California Labor Code section 2802. The benefits and protections of such statutes  
2 extend to Plaintiffs, even if they were and are otherwise subject to the exclusion of  
3 Labor Code section 1171 as outside salespersons.

4 35. Within the three (3) years before the filing of this Complaint, as  
5 Agents (and/or in similar positions and/or with similar job titles, duties, and  
6 responsibilities) employed pursuant to the TSA Plan Agreement throughout the  
7 State of California, Plaintiffs have been required to, among other items: pay  
8 monthly rent on a cubicle in Defendants' offices; pay monthly telephone service  
9 charges for a phone line run into their cubicle; pay copy charge fees; and pay for  
10 required, specialized software and technical support for that software as a monthly  
11 charge. Defendants have also charged Plaintiffs a "commission administration fee"  
12 for each policy on which Defendants paid Plaintiffs a commission. These unlawful  
13 deductions and/or charges violate California Labor Code §§ 221, 223, 451 and/or  
14 2802.

15 36. In violation of state law, Defendants have refused to perform their  
16 obligations to properly indemnify and reimburse Plaintiffs for such items, and  
17 avoid making deductions or set-offs from Plaintiffs' earned wages. As a direct and  
18 proximate result, Plaintiffs have suffered, and continue to suffer, substantial losses  
19 related to the use and enjoyment of such monies, lost interest on such wages, and  
20 expenses and attorneys' fees in seeking to compel Defendants to fully perform  
21 their obligation under state law, all to their respective damage in amounts  
22 according to proof at time of trial. As Defendants' conduct described herein  
23 violates the provisions of the California Labor Code regarding indemnification,  
24 reimbursement, and unlawful deductions from wages, Plaintiffs are thus entitled to  
25 recover all amounts for all such expenses, penalties pursuant to Labor Code  
26 section 203, interest, attorneys' fees, and court costs and expenses of suit, pursuant  
27 to Labor Code sections 218.6 and 2802, according to proof at time of trial.  
28 Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such

1 expenses and benefits, nominal, actual and compensatory damages in amounts  
2 according to proof at time of trial.

3 37. WHEREFORE, Plaintiffs request relief as herein provided.

4 **THIRD CAUSE OF ACTION (COUNT THREE):**

5 **FAILURE TO PROVIDE PROPERLY ITEMIZED WAGE STATEMENTS,**

6 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

7 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

8 **(By All Plaintiffs, Against All Defendants)**

9 38. Plaintiffs hereby reallege, and incorporate by reference in this Cause  
10 of Action as though set forth fully herein, the allegations contained in Paragraphs  
11 1 through 37, above. This cause of action is plead by all Plaintiffs, against all  
12 Defendants.

13 39. Within the three (3) years before the filing of this Complaint,  
14 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or  
15 with similar job titles, duties, and responsibilities) throughout the State of  
16 California, to conduct and transact Defendants' insurance and financial products  
17 business. Defendants have unlawfully denied Plaintiffs wages and other benefits  
18 of employment, when as a matter of fact and law, Agents are Defendants'  
19 "employees" pursuant to contract. As a result, Plaintiffs are, and remain, entitled  
20 to the protections of the California Industrial Welfare Commission Wage Order  
21 No. 4-2001, originally and as amended, and the California Labor Code, with  
22 regard to the requirements that Defendants provide Plaintiffs with correctly  
23 itemized wage statements at each pay period, but in no event fewer than twice  
24 monthly, including proper payment of wages and expenses, and proper itemization  
25 of employees' pay, and withholding of deductions authorized in writing by  
26 employees, among other items.

27 40. In violation of state law, Defendants have refused to perform their  
28 obligations to provide Plaintiffs with properly itemized wage statements, including



1 proper payment of wages and expenses, and proper itemization of employees' pay,  
2 and of deductions authorized in writing by employees.

3 41. As a direct and proximate result of Defendants' failure to provide  
4 Plaintiffs with properly itemized wage statements,, Plaintiffs have suffered, and  
5 continue to suffer, substantial losses related to the use and enjoyment of such  
6 wages, monies, and wage statements and wage benefits, lost interest on wages and  
7 expenses and benefits, and expenses and attorneys' fees in seeking to compel  
8 Defendants to fully perform their obligation under state law, all to their respective  
9 damage in amounts according to proof at time of trial. Plaintiffs are thus entitled to  
10 recover all amounts for all such wages and expenses and benefits on such wage  
11 statements, penalties, interest, attorneys' fees, and court costs and expenses of suit,  
12 pursuant to Labor Code sections 218.6 and 226, according to proof at time of trial.  
13 Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such  
14 wages and expenses and benefits, nominal, actual and compensatory damages in  
15 amounts according to proof at time of trial.

16 42. WHEREFORE, Plaintiffs request relief as herein provided.

17 **FOURTH CAUSE OF ACTION (COUNT FOUR):**

18 **WAGES UNLAWFULLY WITHHELD AT TERMINATION,**  
19 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**  
20 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**  
21 **(By All Plaintiffs, Against All Defendants)**

22 43. Plaintiffs hereby reallege, and incorporate by reference in this Cause  
23 of Action as though set forth fully herein, the allegations contained in Paragraphs  
24 1 through 42, above. This cause of action is plead by all Plaintiffs, against all  
25 Defendants.

26 44. Within the three (3) years before the filing of this Complaint,  
27 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or  
28 with similar job titles, duties, and responsibilities) pursuant to the TSA Plan

1 Agreement, throughout the State of California, to conduct and transact  
 2 Defendants' insurance and financial products business. Defendants have  
 3 unlawfully denied Plaintiffs wages and other benefits of employment, when as a  
 4 matter of fact and law, Agents are Defendants' employees pursuant to contract. As  
 5 a result, Plaintiffs are and have been entitled to the protections of the California  
 6 Labor Code, with regard to the requirements that Defendants provide Plaintiffs  
 7 with all earned wages as of the date of each former-employee-Plaintiffs'  
 8 termination of employment with Defendants.

9 45. In violation of state law, Defendants have refused to perform their  
 10 obligations to provide former-employee-Plaintiffs with all earned wages as of the  
 11 date of each former-employee-Plaintiffs' termination of employment with  
 12 Defendants. As a direct and proximate result, Plaintiffs have suffered, and  
 13 continue to suffer, substantial losses related to the use and enjoyment of such  
 14 compensation, all to their respective damage in amounts according to proof at time  
 15 of trial. As Defendants' conduct described herein violates the provisions of the  
 16 California Labor Code regarding proper payment of all earned wages as of the  
 17 date of each former-employee-Plaintiffs' termination of employment with  
 18 Defendants, Plaintiffs are thus entitled to recover all amounts for all such  
 19 compensation plus waiting time penalties pursuant to Labor Code sections 200 -  
 20 203, according to proof at time of trial. Plaintiffs are also entitled to recover, in  
 21 addition to or in lieu of some or all such compensation and benefits, nominal,  
 22 actual and compensatory damages in amounts according to proof at time of trial.

23 46. WHEREFORE, Plaintiffs request relief as herein provided.

24 **FIFTH CAUSE OF ACTION (COUNT FIVE):**

25 **VIOLATION OF CALIFORNIA LABOR CODE**

26 **SECTIONS 221, 450 AND 2802**

27 **(By All Plaintiffs, Against All Defendants)**

28 47. Plaintiffs hereby reallege, and incorporate by reference in this Cause

1 of Action as though set forth fully herein, the allegations contained in paragraphs  
2 1 through 46, above. This cause of action is plead by all Plaintiffs, against all  
3 Defendants.

4 48. Within the preceding three (3) years, Defendants maintained a scheme  
5 by which Plaintiffs have been required to pay Defendants for, among other items:  
6 pay monthly rent on a cubicle in Defendants' offices; pay monthly telephone  
7 service charges for a phone line run into their cubicle; pay copy charge fees; and  
8 pay for required, specialized software and technical support for that software as a  
9 monthly charge. Defendants have also charged Plaintiffs a "commission  
10 administration fee" for each policy on which Defendants paid Plaintiffs' a  
11 commission. Further, upon the end of an Agent's employment with Defendants,  
12 Defendants demanded immediate payment of any of these business expenses  
13 and/or fees assessed against the Agent by Defendants and remaining unpaid at the  
14 end of employment, and threatened the Agent with collections action if the Agent  
15 failed to make immediate payment. This Cause of Action seeks recovery of such  
16 sums paid by Agents (and/or others in similar positions and/or with similar job  
17 titles, duties, and responsibilities) after the end of their employment and in  
18 response to such threats of collections activity made by Defendants.

19 49. At all times relevant, California Labor Code sections 221, 450 and  
20 2802 were in effect and prohibited Defendants' collection of wages previously  
21 paid to employees and/or coercing employees to patronize Defendants by paying  
22 rent for cubicles, charges for telephone service, and surcharges for copying,  
23 among others. Further, Defendants' attempts to collect these sums from Agents  
24 after the end of employment constitutes a further violation of these sections.

25 50. WHEREFORE, Plaintiffs request relief as herein provided.

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**SIXTH CAUSE OF ACTION (COUNT SIX):**  
**UNFAIR BUSINESS PRACTICES IN VIOLATION OF**  
**CALIFORNIA BUSINESS AND PROFESSIONS CODE**  
**SECTIONS 17200, ET. SEQ.,**  
**BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**  
**(By All Plaintiffs, Against All Defendants)**

51. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as though set forth fully herein, the allegations contained in Paragraphs 1 through 50, above. This cause of action is plead by all Plaintiffs, against all Defendants.

52. Defendants engage in business practices, offer their insurance policies and financial products for sale, and advertise their goods and services within the jurisdiction of the State of California. As such, Defendants have a duty to comply with the provisions of the Unfair Business Practices Act as set forth in California Business & Professions Code sections 17200, *et seq.*, which Act prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising by any person, firm, corporation, or association within the jurisdiction of the State of California.

53. By violating the foregoing provisions of California's labor and employment laws, and by failing to take immediate and appropriate measures to address these violations, Defendants' acts constitute unfair business practices under Business and Professions Code sections 17200, *et. seq.* Defendants' violations of California's labor and employment laws constitute a business practice because they have been done repeatedly over a significant period of time throughout the State of California, and in a systematic manner to the detriment of many Plaintiffs.

54. As a direct, foreseeable, and proximate result of Defendants' acts and omissions alleged herein, for the four (4) years preceding the filing of this action

1 Plaintiffs, including Named Plaintiffs ORTMANN and OPYRCHAL, have lost  
2 money and suffered injuries, and Defendants have also been unjustly enriched as a  
3 result of unfair competition. Plaintiffs therefore request restitution of all monies  
4 paid to Defendants by the Plaintiffs pursuant to the illegal acts alleged herein, all  
5 in an amount according to proof at time of trial, in lieu of or in addition to other  
6 types of relief requested herein.

7 55. WHEREFORE, Plaintiffs request relief as herein provided.

8 **SEVENTH CAUSE OF ACTION (COUNT SEVEN):**

9 **UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF**  
10 **CALIFORNIA BUSINESS AND PROFESSIONS CODE**

11 **SECTIONS 17200, ET. SEQ.,**

12 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

13 **(By All Plaintiffs, Against All Defendants)**

14 56. Plaintiffs hereby reallege, and incorporate by reference in this Cause  
15 of Action as though set forth fully herein, the allegations contained in Paragraphs  
16 1 through 55, above. This cause of action is plead by all Plaintiffs, against all  
17 Defendants.

18 57. Defendants engage in business practices, offer their insurance  
19 policies and financial products for sale, and advertise their goods and services  
20 within the jurisdiction of the State of California. As such, Defendants have a duty  
21 to comply with the provisions of the Unfair Business Practices Act as set forth in  
22 California Business & Professions Code sections 17200, *et seq.*, which Act  
23 prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices  
24 and unfair, deceptive, untrue, or misleading advertising by any person, firm,  
25 corporation, or association within the jurisdiction of the State of California.

26 58. By violating the foregoing provisions of California's labor and  
27 employment laws, and by failing to take immediate and appropriate measures to  
28 address these violations, Defendants' acts constitute unlawful business practices

1 under Business and Professions Code sections 17200, *et. seq.* Defendants'  
2 violations of California's labor and employment laws constitutes a business  
3 practice because they have been done repeatedly over a significant period of time  
4 throughout the State of California, and in a systematic manner to the detriment of  
5 scores of Plaintiffs.

6 59. As a direct, foreseeable, and proximate result of Defendants' acts and  
7 omissions alleged herein, for the four (4) years preceding the filing of this action  
8 Plaintiffs, including Named Plaintiffs ORTMANN and OPYRCHAL, have lost  
9 money and suffered injuries, and Defendants have also been unjustly enriched as a  
10 result of unfair competition. Plaintiffs therefore request restitution of all monies  
11 paid to Defendants by the Plaintiffs pursuant to the illegal acts alleged herein, all  
12 in an amount according to proof at time of trial, in lieu of or in addition to other  
13 types of relief requested herein.

14 60. WHEREFORE, Plaintiffs request relief as herein provided.

15 **V. PRAYER FOR RELIEF**

16 61. Plaintiffs hereby reallege, and incorporate by reference in this Section  
17 as though set forth fully herein, the allegations contained in Paragraphs 1 through  
18 60, above.

19 WHEREFORE, Plaintiffs pray for judgment as follows:

- 20 1. For nominal damages;
- 21 2. For actual damages;
- 22 3. For compensatory damages;
- 23 4. For restitution of all monies, wages, expenses and benefits due to  
24 Plaintiffs;
- 25 5. For interest accrued to date;
- 26 6. For interest pursuant to Labor Code section 218.6, 1194, and 1194.2;
- 27 7. For penalties pursuant to Labor Code sections 203 and 226;
- 28 8. For liquidated damages pursuant to Labor Code section 1194.2;

1           10.   For costs of suit and expenses incurred herein pursuant to Labor Code  
2 sections 226, 1194, and 2802;

3           11.   For reasonable attorneys' fees pursuant to Labor Code sections 226,  
4 1194, and 2802, and C.C.P. section 1021.5;

5           12.   For appropriate equitable relief;

6           13.   For appropriate declaratory relief;

7           14.   For all such other and further relief that the Court may deem just and  
8 proper.

9  
10 Dated: \_\_\_\_\_

**POPE, BERGER & WILLIAMS, LLP,  
LAW OFFICES OF DOUGLAS J. CAMPION  
MARLIN & SLATZMAN  
SCHWARTZ, DANIELS & BRADLEY  
LAW OFFICES OF PETER M. HART**

11  
12  
13  
14 By: \_\_\_\_\_

A. Mark Pope  
Attorneys for Named Plaintiffs OLGA ORTMANN  
and JUSTIN OPYRCHAL, individually, and on  
behalf of all other similarly situated current and  
former employees of Defendants in the State of  
California

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**DEMAND FOR JURY TRIAL**

Named Plaintiffs OLGA ORTMANN and JUSTIN OPYRCHAL, individually, and on behalf of all other similarly situated current and former employees of Defendants in the State of California, hereby demand a jury trial.

Dated: \_\_\_\_\_

**POPE, BERGER & WILLIAMS, LLP,  
LAW OFFICES OF DOUGLAS J. CAMPION  
MARLIN & SLATZMAN  
SCHWARTZ, DANIELS & BRADLEY  
LAW OFFICES OF PETER M. HART**

By: \_\_\_\_\_

**A. Mark Pope  
Attorneys for Named Plaintiffs OLGA  
ORTMANN and JUSTIN OPYRCHAL,  
individually, and on behalf of all other  
similarly situated current and former  
employees of Defendants in the State of  
California**